



DATE: April 21, 1999

CASE NO: 99-TLC-4

In the Matter of:

B & B GLASS, INC.,

Employer

Appearances: Joanne Trifilo Stark
Phoenix, AZ

Certifying Officer: Rebecca Marsh Day
San Francisco, CA

JOHN M. VITTON
Chief Administrative Law Judge

ORDER OF DISMISSAL

On April 5, 1999, Employer, through counsel, filed a Request for Expedited Administrative-Judicial Review of the denial of its application for labor certification. In its Request, Employer contends that:

[a]ccording to 20 C.F.R. § 655.204(d) the DOL was required to. . . 'offer the employer an opportunity to request an expedited administrative judicial-review of the denial by a Department of Labor (DOL) Hearing Officer.' As you can see in the attached Final Determination this was not done.

Upon review of the Final Determination (FD) and Employer's application for certification (ETA 750 A), the undersigned finds that this matter falls within the purview of 20 C.F.R. § 655, **subpart A**, and not 20 C.F.R. § 655, **subpart B**, as contended by Employer. Subpart A is applicable to the labor certification process for temporary employment in occupations **other than agriculture, logging, or registered nursing** in the United States (H-2B Workers). Subpart B applies to the labor certification process for temporary **agricultural** employment in the United States (H-2A).¹

The Final Determination notified Employer that its application was being denied pursuant to "Title 20, Code of Federal Regulations Part 621." Unfortunately, this may have caused some confusion. Twenty C.F.R. §§ 621.1, 621.2, and 621.3 were removed and redesignated as §§ 655.1,

¹Employer seeks to certify aliens for the position of "Glazier." (ETA 750 A).

655.2, 655.3, respectively, in 1990.² The CO's Final Determination did, however, correctly reference 8 C.F.R. § 214.2(h), which pertains to the labor certification of temporary employees.

The regulations at § 655, subpart A, do not allow for an appeal to the Board of Alien Labor Certification Appeals (BALCA) if an application for temporary certification is denied. Pursuant to § 655.3(d), Employer may "use" the denial notice to support its visa petition, to be filed with the District Director of the Immigration and Naturalization Service.

On April 13, 1999, the parties were ordered to show cause why BALCA should, or should not, entertain Employer's appeal. The Solicitor's attorney informed BALCA on April 19, 1999, that the parties would not be submitting a response to the Show Cause Order. The parties concede that BALCA does not have jurisdiction to hear this matter.

Accordingly, this matter is hereby **DISMISSED**.

SO ORDERED.

JOHN M. VITTON
Chief Administrative Law Judge

JMV/pmb

²The Certifying Officer may have mistakenly relied upon an older form. Nonetheless, the procedural history of 20 C.F.R. Part 621 is clear.